

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

PREAMBLE

1. Sections Affected

	Rulemaking Action
R5-4-101	New Section
R5-4-102	Repeal
R5-4-102	New Section
R5-4-201	New Section
R5-4-301	New Section
R5-4-302	New Section
R5-4-502	Repeal
R5-4-503	Repeal
R5-4-601	Repeal
R5-4-602	Repeal
R5-4-603	Repeal
R5-4-705	Repeal
R5-4-807	Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 31-401 and 31-402

Implementing statutes: A.R.S. §§ 31-415, 31-442, 38-431.01, 41-1604.11 (G), and 41-1604.13(G)

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Gail Kelsey

Address: Board of Executive Clemency
1645 West Jefferson, Room 326
Phoenix, Arizona 85007

Telephone: (602) 542-5656 ext. 237

Fax: (602) 542-5680

4. An explanation of the rule, including the agency's reasons for initiating the rule:

Since the board does not conduct parole hearings on inmates who commit an offense after January 1, 1994, these rules explain the current operation of the board. The implementation of these rules explains the affect on persons other than the inmate. There are rules that the board will be repealing, since they are exempt pursuant to A.R.S. § 41-1005.7.

R5-4-101, Definitions. Defines all terms used throughout the rules.

R5-4-102, Public Comment at Board Hearings. This rule explains public participation at a board hearing.

R5-4-201, Pardon. This rule explains the process in which an eligible individual may apply for a pardon.

R5-4-301, Rescission Hearings. This rule explains the board's hearing process when a request has been submitted to the board to rescind a previous decision made by the board.

R5-4-302, Revocation Hearings. This rule explains the board's hearing process when it has been alleged that an inmate has violated conditions of release.

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5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

Persons who will be directly affected by the proposed rule making will be the officials and victims that request to be notified of the status of inmates and parolees. The agency, DPS, FBI and any individual seeking an executive clemency action will bear some cost from the implementation of these rules. There will be no impact to small businesses, private or public employment business, agencies or political subdivisions.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Gail Kelsey
Address: 1645 W. Jefferson, Room 326
Phoenix, Arizona
Telephone: (602) 542-5656 ext. 237
Fax: (602) 542-5680

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: March 27, 1997
Time: 9 a.m.
Location: Board of Executive Clemency
1645 West Jefferson, Room 326
Phoenix, Arizona 85007
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary summary of the economic, small business, and consumer impact statement must be received at the address shown above by 5 p.m. on March 24, 1997.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Arizona Board of Executive Clemency, at (602) 542-5656. Requests should be made as early as possible to allow time to arrange the accommodation.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporations by reference and their location in the rules:

Not applicable.

11. The full text of the rules follows:

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

ARTICLE 1. GENERAL PROVISIONS

Section	
R5-4-101.	Definitions
R5-4-102.	Definitions
R5-4-102.	Public Comment at Board Hearings

ARTICLE 2. EXECUTIVE CLEMENCY ACTIONS

Section	
R5-4-201.	Pardons

ARTICLE 3. REVOCATION

Section	
R5-4-301.	Rescission Hearings
R5-4-302.	Revocation Hearings

ARTICLE 5. PAROLE REVOCATION

Section	
R5-4-502.	Preliminary Hearings
R5-4-503.	Revocation Hearing Process

ARTICLE 6. EXECUTIVE CLEMENCY ACTIONS

Section	
R5-4-601.	Pardon
R5-4-602.	Commutation of Sentence
R5-4-603.	Reprieve

ARTICLE 7. OTHER BOARD ACTIONS

Section	
R5-4-705.	In-absentia hearings

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ARTICLE 8. WORK FURLOUGH

Section
R5-4-807. Work Furlough Revocation

ARTICLE 1. GENERAL PROVISIONS

R5-4-101. Definitions

In this Chapter, unless otherwise specified:

1. "Applicant" means an individual who asks the Governor to grant a pardon.
2. "Board" means the Arizona Board of Executive Clemency (formerly the Arizona Board of Pardons and Parole).
3. "Department" means the Department of Corrections.
4. "Inmate" means an individual who is in the custody of or under the jurisdiction of the Department, including individuals on parole, home arrest, work furlough, and community supervision.
5. "Pardon" means an action by the Governor that absolves an applicant of the legal consequences of the crime for which the applicant was convicted.
6. "Presiding Officer" means either the Chairperson of the Board or the Chairperson of a Board panel assigned to conduct a hearing.
7. "Rescission" means to void a release decision that was previously granted by the Board.
8. "Request to rescind" means a document asking the Board to void a decision to grant an inmate a release.
9. "Revocation" means an act by the Board to terminate an inmate's release status.
10. "Street time" means from the time an inmate accepts parole, work furlough or home arrest until the time parole, work furlough or home arrest is revoked or completed.
11. "Warrant" means a document of written allegations, initiated by the Department or the parole officer on an inmate who is alleged to have violated condition(s) of release, the law, or discipline rules of the Department.
12. "Work day" means Monday through Friday of each week except federal and state holidays.
9. "Parole to a detainer" — conditional release to another jurisdiction.
10. "Parole to consecutive sentence" — conditional release from a specified sentence granted an inmate serving consecutive sentences allowing him to begin serving time on the next sentence while he remains incarcerated.
11. "Warrant" — document that specifies alleged violations of parole served to a parolee notifying him he is to appear as requested.
12. "Preliminary hearings" — initial hearing held to determine if there is probable cause to believe that a violation of parole has occurred.
13. "Revoke" — to order an individual changed from parole status to returning him to the institution as a result of violating the condition(s) of his parole.
14. "Reinstatement" — to allow an individual whose parole has been revoked to return to parole status.
15. "Rescind" — to void an order of a Board action previously taken.
16. "Street time" — is from the time a person accepts parole until the time parole is revoked or completed.
17. "Executive clemency" — constitutional power given to the Governor allowing him authority to grant commutation, pardons and reprieves for all offenses except treason and cases of impeachment upon such conditions and with such restrictions and limitations as may be provided by law. These actions may only be granted upon recommendation by the Board.
18. "Attorney General" — chief legal counsel for the Board an authority on Arizona's Revised Statutes and Constitution.
19. "In absentia hearings" — a properly convened hearing held involving an individual who is not physically present.
20. "Waiver" — the voluntary relinquishment of some right(s).
21. "Old Code(s)" — applies to persons whose crimes were committed prior to October 1, 1978.
22. "New Code" — applies to persons whose crimes were committed on or after October 1, 1978.

R5-4-102. Definitions

The meaning of these words and terms as used in these articles shall be limited to the following:

1. "Board" — Arizona Board of Pardons and Paroles.
2. "Chairman" — member who has been elected by the Board to preside and act as spokesman.
3. "Member" — person duly appointed by the Governor and confirmed by the Senate to serve on the Board.
4. "Department of Corrections" — agency responsible for State correctional institutions, parole supervision, interstate compact agreements, time computations, eligibility certification and any other responsibilities mandated by law. This agency is headed by a Director, appointed by the Governor and confirmed by the Senate.
5. "Inmate" — any prisoner under the jurisdiction of the Department of Corrections in an institution.
6. "Parolee" — any inmate who has been released on parole by the Board and is under the supervision of the Department of Corrections.
7. "Vice chairman" — member of the Board who assists the Chairman and serves on a rotation basis.
8. "Parole" — a conditional release from incarceration allowing the individual to serve the remainder of his sentence outside the institution if he abides by specific conditions.

R5-4-102. Public Comment At Board Hearings

During any hearing conducted by the Board, the Presiding Officer may allow any person to provide oral or written information relevant to the hearing.

ARTICLE 2. EXECUTIVE CLEMENCY ACTIONS

R5-4-201. Pardon

- A. Unless prohibited by law, an individual who has been convicted of a felony offense in Arizona may apply for a pardon if the judgment of guilt or conviction has not been vacated or set aside by a court.
- B. To request a pardon, an individual who is not an inmate shall submit to the Board a completed pardon application obtained from the Board. The Board, at its discretion, may require the applicant to submit additional information and documents.
- C. To request a pardon an inmate shall submit to the Department, a completed pardon application obtained from the Board. The Department shall review the application and verify whether the inmate is eligible to apply for a pardon. The Board, at its discretion, may require the applicant to submit additional information and documents.
- D. After an eligible applicant has completed all application requirements, the Board shall schedule a hearing and notify the applicant in writing of the date and time of the hearing.
- E. At the hearing, the Board shall take 1 of the following actions:
 1. Vote to deny the request for a pardon and notify the applicant in writing of the Board's decision within 10 work

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days. The applicant is not eligible to re-apply for a pardon for 3 years from the date that the pardon is denied.

2. Vote to recommend to the Governor that a pardon be granted and notify the applicant in writing of the Board's decision within 10 work days.
- E. If the Board votes to recommend a pardon, Board members who voted in the affirmative shall prepare and send to the Governor a letter of recommendation, including reasons for the Board's recommendation. Letters of dissent may be prepared by the dissenting Board members and sent to the Governor.
- G. If the Board's recommendation is denied by the Governor, the applicant shall be notified in writing by the Board when the decision is known. The applicant is not eligible to re-apply for a pardon for 3 years from the date that the pardon is denied.

ARTICLE 3. REVOCATION

R5-4-301. Rescission Hearings

- A. To initiate the rescission process, the Department or a Parole Officer shall submit a request to rescind to the Board. A request to rescind may be submitted for an alleged:
 1. Violation of law.
 2. Violation of discipline rules of the Department.
 3. Failure to meet a condition of release.
 4. Failure to provide accurate information to the Board when parole was granted.
- B. In the warrant the Department shall provide to the Board and the inmate a list of all documents, items of evidence to be submitted, and witnesses who will be called to testify at the rescission hearing.
- C. The rescission hearing shall be conducted by the Board. Before the start of the rescission hearing, at the request of the inmate the hearing may be continued for the following reasons:
 1. To obtain legal representation;
 2. Inadequate notification of the hearing;
 3. Lack of opportunity to question adverse witnesses, supportive witnesses, or the parole officer or Department officer who initiated the request to rescind; and
 4. Other reasons to be considered by the Board.
- D. At the close of the rescission hearing the Board shall take 1 of the following actions:
 1. Find that the allegations in the request to rescind are not true and dismiss the request to rescind. The Board's previous decision to grant release to the inmate will stand.
 2. Find that 1 or more of the allegations in the request to rescind are true and void the Board's previous decision to grant release to the inmate. The inmate shall be held in the custody of the Department as provided by law.
 3. Find that 1 or more of the allegations in the request to rescind are true, however, allow the Board's previous decision to grant release to the inmate to stand.

R-4-302. Revocation Hearings

- A. The revocation process shall be initiated by issuance of a warrant of arrest by the Department or a Parole Officer for an alleged violation of a condition of release. The warrant of arrest is submitted to the Board.
- B. In the warrant the Department shall provide to the Board and the inmate a list of all documents, items of evidence to be submitted, and witnesses who will be called to testify at the revocation hearing.
- C. The revocation hearing shall be conducted by the Board. Before the start of a revocation hearing, at the request of the inmate the hearing may be continued for the following reasons:

1. To obtain legal representation;
2. Inadequate notification of the hearing;
3. Lack of opportunity to question adverse witnesses, supportive witnesses, or the parole officer who initiated the warrant of arrest; and
4. Other reasons to be considered by the Board.
- D. At the close of the revocation hearing the Board shall take 1 of the following actions:
 1. Find that the allegations in the warrant are not true and direct, in writing, to the Department that the warrant of arrest be quashed. The inmate shall be returned to parole, home arrest, work furlough, or community supervision status.
 2. In the case of an inmate on parole, find that 1 or more of the allegations in the warrant are true and revoke the inmate's release status, but place the inmate on home arrest. The inmate shall be held by the Department pending release on home arrest.
 3. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that 1 or more of the allegations in the warrant are true but reinstate the inmate's release status with or without additional conditions.
 4. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that the allegations in the warrant of arrest are true and direct that the inmate's release status be revoked. The inmate shall revert immediately to secure custody and be held by the Department in that status as provided by law.
- E. If an inmate's parole status is revoked, the Board, at its discretion, may require the forfeiture of some or all street time credits earned by the inmate while on release.

ARTICLE 5. PAROLE REVOCATION

R5-4-502. Preliminary hearings

An initial hearing is held to determine if there is probable cause to believe the parolee has violated condition(s) of his parole.

1. A hearing officer conducts this hearing in the jurisdiction where the alleged violation occurred.
2. The parolee is given an opportunity to speak on his behalf and may be represented by legal counsel.
3. Friends, family and other witnesses are allowed to speak concerning the parolee.
4. The parolee may request the presence of persons who have given adverse information on which a parole violation is to be based and cross-examine those persons.
5. The hearing officer collects all the facts presented and decides if there is probable cause to believe a violation has occurred.
6. A parolee is continued on parole status when it is determined that no probable cause exists.
7. When it is determined that there is probable cause to believe a violation has occurred, the parolee is remanded to the custody of the Department of Corrections to await a parole revocation hearing by the Board of Pardons and Paroles, after the disposal of any and all charges pending against him.

R5-4-503. Revocation hearing process

- A. The parolee is notified in writing of this hearing date.
- B. The parolee is granted a hearing before the Board and is interviewed as to the alleged parole violation(s).
- C. Input from family and other witnesses is considered.
- D. Representation by legal counsel is allowed.
- E. The Board makes its decision and notifies the parolee and the Department of Corrections.

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- F. Those believed not in violation are allowed to continue serving their parole in society.
- G. Persons found in violation of their parole may be subject to forfeiture of street time and may be remanded to the custody of the Department of Corrections.

ARTICLE 6. EXECUTIVE CLEMENCY ACTIONS

R5-4-601. Pardon

- A. This action granted by the Governor only after a recommendation by the Board, absolves the convicted felon the legal consequences of his crime and conviction.
- B. Application process: Several steps must be followed before the individual can be heard by the Board. This process may take one (1) year to complete at which time the Board reviews the case and interviews the applicant.
- C. Eligibility: Anyone who has been convicted of a felony in the State of Arizona may apply.
- D. Procedure and preparation: The following procedure is recommended to the applicant seeking a pardon.
 - 1. A written request must be made to the Board.
 - 2. Once the written request is received by the Board, they will send a packet of information detailing the requirements for pardon consideration. Included in this packet is a pardon application form which must be completed and submitted along with the additional information required. The application should include all of the following data:
 - a. A certified copy of the commitment document from the county in which the applicant was convicted.
 - b. Verification of written notice sent to the presiding Judge of the Superior Court and the County Attorney notifying them of his intention to file a pardon application.
 - c. Notice of application for a pardon is to be published for thirty (30) days from the first publication in a newspaper in the county where the conviction was received.
 - d. A notarized letter from the applicant attesting to any arrest or conviction since his conviction, together with all the facts concerning this conviction.
 - e. Three letters from upstanding citizens, relatives not included, attesting to his good conduct since his release.
 - f. A recent set of fingerprints obtained at a law enforcement agency in the county where the applicant resides. These results should be forwarded to the Board from the F.B.I.
- E. Hearing: The Board reviews all the information received regarding the individual applicant. He is given written notice of a hearing date. Hearing dates are established by the Chairman of the Board. An applicant may be heard in absentia if he first requests this in writing.
 - 1. The applicant is interviewed by the Board, at which time he presents his reasons for desiring a pardon and any new information which may aid the Board in reaching a decision.
 - 2. The individual is allowed to speak first and other witnesses may speak thereafter.
 - 3. Representation by legal counsel is permitted.
 - 4. After due consideration, the Board reaches a decision and notifies the applicant within ten (10) days of that decision.
- F. Favorable disposition: Recommendations for a pardon are forwarded to the Governor for his consideration and decision. Data compiled may also be included in this recommendation.

- G. Unfavorable disposition: If the application is not recommended to the Governor or denied by the Governor, the applicant may re-apply three years from the date of such action.
- H. Rights restored if any by the Governor. See A.R.S. § 31-443 for any restrictions.

R5-4-602. Commutation of sentence

- A. This action changes the penalty imposed by a Court on a convicted felon to one that is less severe, but does not restore his civil rights.
- B. Preparation of application: All applications made to the Governor for a commutation of sentence are transmitted to the Chairman of the Board of Pardons and Paroles for review.
- C. Eligibility
 - 1. Only those inmates certified eligible by the Department of Corrections may apply.
 - 2. Individuals must complete and sign the Application for Commutation form adopted by the Board.
 - 3. Only those applicants who have served two (2) years from their sentence begin date and are not within one (1) year of their parole eligibility or their mandatory release date will be considered.
 - 4. When there is an imminent danger of the death of the person convicted or imprisoned, the Board will immediately grant a personal interview.
- D. Two-step process
 - 1. First phase: The Board reviews the applications, the applicant's file, letters and all relevant information on a special hearing day set by the Chairman. Family and friends and other witnesses may submit written information concerning the inmate. Legal counsel is permitted.
 - a. If a majority of the Board members present believes there is no basis for further consideration on the application, the inmate is notified of the denial.
 - b. If sufficient reasons exist to warrant further investigation, the inmate is scheduled to appear for a personal interview.
 - 2. Second phase: A comprehensive investigation and report are prepared prior to the scheduled hearing.
 - a. Witnesses may submit written information and may also appear.
 - b. An attorney may be present at this personal interview.
 - c. At the conclusion of this hearing, a final decision is made to either recommend this action to the Governor or deny the application.
- E. Actions after second hearing
 - 1. If the Board's decision is to recommend a Commutation of Sentence to the Governor, a letter of recommendation, including reasons from the members of the Board who voted. In the affirmative, is prepared. Letters of dissent may also be prepared and forwarded.
 - 2. Letters of recommendation and dissent, along with any or all of the data collected for this second phase, are transmitted to the Governor by the Chairman.
 - 3. If the Board's decision is to deny the applicant a commutation, the inmate is notified of this decision within ten (10) days.
 - 4. Subsequent applications are not considered until a period of twenty-four (24) months has elapsed from the previous denial.

R5-5-603. Reprieve

- A. A reprieve is an executive clemency action granted by the Governor after recommendation by the Board of Pardons and Paroles which temporarily postpones the execution of a judg-

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ment for a specific time. The most common use of this action in the State of Arizona applies to the death sentence. The Board has the responsibility and authority to review all cases where an individual is given the death sentence and to determine whether or not there are grounds to grant a reprieve and recommend such action to the Governor.

B. Pre-hearing procedures

1. A copy of the Warrant for Execution is sent to the Board when it is served on the individual.
2. A hearing date is set and the inmate and his attorney are notified in writing; in addition, other appropriate agencies and officials are given notice of this hearing.
3. A comprehensive report on the inmate, including psychological and psychiatric evaluations, is prepared.
4. Trial transcripts of the case may be requested by the Board.

C. Hearing: Interviewing procedures are as usual except the Chairman interviews the inmate and allows the attorney to make his presentation before other Board members ask questions of the inmate and/or his attorney.

1. Immediate family and a member of the clergy may be present if requested by the inmate and approved by the Board.
2. Other witnesses may testify one at a time.
3. A member of the support staff of the Board is responsible for taking minutes, taping the hearing and other duties deemed necessary.

D. Post-hearing procedures

1. If the decision is to recommend a reprieve, the recommendation, supporting reasons, and any pertinent information are forwarded to the Governor.
 - a. The inmate and his attorney are notified of this decision.
 - b. The Director of the Department of Corrections and any other appropriate agencies are notified.
 - c. The Chairman serves as the spokesman for the Board in relating to the Governor's office, the public and the media.
 - d. Any request to re-open the hearing requires a majority vote of the Board.
2. If the decision is to deny, notification without reasons is sent to the Governor, the inmate, his attorney, the Department of Corrections and other appropriate agencies.

ARTICLE 7. OTHER BOARD ACTIONS

R5-4-705. In absentia hearings

The Board may hold these hearings for an inmate who is not physically present.

ARTICLE 8. WORK FURLOUGH

R5-4-807. Work furlough revocation

A. A preliminary hearing shall be held to determine if there is probable cause that the work furloughee has violated condition(s) of his work furlough.

1. The inmate on work furlough shall be notified in writing of this hearing date.
2. A designee of the Board shall conduct the preliminary hearing.
3. The work furloughee shall be given an opportunity to speak on his behalf and may be represented by legal counsel at his expense.
4. Friends, family and other witnesses shall be allowed to speak concerning the work furloughee, subject to limitation to avoid repetition.
5. The work furloughee may request the presence of persons who have given adverse information on which a work furlough violation is to be based and may cross-examine those persons.
6. The hearing officer shall consider all the facts presented and decide if there is probable cause to believe a violation has occurred, or that the best interests of the state would be served by revoking the work furlough.
7. A work furloughee shall be continued on work furlough status when it is determined that no probable cause exists or when the best interests of the state would be served by allowing the inmate to remain on work furlough status.
8. When it is determined that there is probable cause to believe a violation has occurred, the work furloughee shall be remanded to the custody of the Department of Corrections to await a work furlough revocation hearing by the Board of Pardons and Paroles, after the disposal of any and all charges pending against him.
9. A work furloughee may waive his preliminary hearing in which case a finding of probable cause will be entered.

B. Upon a finding of probable cause to believe a violation has occurred, a revocation hearing shall be held to determine if a violation(s) of work furlough has occurred or if it is in the best interests of the state to revoke the work furlough.

1. The inmate on work furlough shall be notified in writing of this hearing date.
2. The work furloughee shall be granted a hearing before the Board and shall be interviewed as to the alleged violation.
3. Input from family and other witnesses shall be considered, subject to limitation to avoid repetition.
4. Legal counsel is permitted at the work furloughee's expense.
5. The Board shall make its decision and notify the inmate and the Director of the Department of Corrections, in writing, of its decision, within ten (10) days.
6. The work furloughee found in violation may be returned to the Department of Corrections.
7. There is no right to appeal the final decision of the Board.

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TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

PREAMBLE

- | | |
|-----------------------------|--------------------------|
| 1. Sections Affected | Rulemaking Action |
| R12-7-104 | Amend |
| R12-7-183 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 27-516(A) and 27-656(A)
Implementing statutes: A.R.S. §§ 27-513, 27-659, and 27-509
- 3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Steven L. Rauzi
Oil and Gas Program Administration

Address: Arizona Geological Survey
416 West Congress, Suite 100
Tucson, Arizona 85701-1315

Telephone: (520) 770-3500
Fax: (520) 770-3505
- 4. An explanation of the rule, including the agency's reasons for initiating the rule:**
R12-7-104 specifies permitting requirements for oil, gas, and geothermal wells. R12-7-183 specifies requirements to transport oil, gas, or geothermal from a lease. These rules are amended to be consistent with the recently enacted time frame statute, A.R.S. § 41-1073.
- 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
- 6. The preliminary summary of the economic, small business, and consumer impact:**
The principal impact of these rules will be on companies drilling for oil, gas, and geothermal resources. Because the rules are mostly procedural in nature, they will not significantly impact the economy or have a significant impact upon small businesses or consumers. The proposed amendments will benefit companies drilling for oil, gas, and geothermal resources by identifying the time frame in which drilling applications or certificates of compliance and authorization to transport will be approved or disapproved.
- 7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Steven L. Rauzi
Oil and Gas Program Administrator

Address: Arizona Geological Survey
416 West Congress, Suite 100
Tucson, Arizona 85701-1315

Telephone: (520) 770-3500
Fax: (520) 770-3505
- 8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
Date: March 14, 1997
Time: 10 a.m.
Location: 1700 West Washington, Room 400
Phoenix, Arizona 85007
Nature: Oral proceeding to adopt amended rules

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9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rules:
None.
11. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

Section

- R12-7-104. Application for Permit to Drill
R12-7-183. Certificate of Compliance and Authorization to Transport

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

R12-7-104. Application for Permit to Drill

- A. Before drilling or reentering any well or conducting any surface disturbance associated with such activity, the operator shall submit to the Commission an application for permit to drill or reenter and obtain approval. The complete application package shall contain:
1. An application for permit to drill on a form provided by the Commission, which shall include the operator's name, address and phone number, and a description of the proposed well and its location;
 2. A well and well-site construction plan that meets the requirements of R12-7-108 through R12-7-118;
 3. A plat, prepared and certified by a registered surveyor bearing the surveyor's certificate number, on which is shown the exact acreage or legal subdivision allotted to the well as required by R12-7-107, the well's exact location, and its ground level elevation;
 4. An organization report as required by R12-7-194;
 5. A performance bond, as required by R12-7-103; and
 6. A fee of \$25 per well.
- B. ~~The Commission shall advise the applicant, within 30 days of receipt of the application in subsection (A), whether the application is administratively complete. Within 30 days of receipt Upon approval of all items required in subsection (A), the Commission shall review the application and:~~
1. ~~Issue a permit to drill;~~
 2. ~~Provide a written explanation to the applicant if the application is not approved; or~~
 3. ~~Require modification to the construction plan before approval. The applicant shall have 30 days to adhere to the required modifications, issue a permit to drill. The Commission may require modification to the proposed construction plan before approval. A permit shall not be issued until these modifications are adhered to by the operator. The Commission shall notify the applicant in writing if the application is not approved.~~

- C. Unless operations are commenced within 180 days after date of approval, the permit to drill shall become null and void unless an extension in writing is granted by the Commission.
- D. In case of imminent danger to public safety or of contamination of the environment, the Commission may authorize the drilling of an emergency relief ~~or offset~~ well to reduce the danger or hazard. Within 10 days of commencing an emergency relief ~~or offset~~ well, the operator shall file an application as required in subsection (A). No well drilled under this subsection shall be used for production unless it conforms to the provisions of R12-7-107.

R12-7-183. Certificate of Compliance and Authorization to Transport

- A. Each producer or operator of any well shall execute under oath and file with the Commission an operators certificate of compliance and authorization to transport oil, gas, or geothermal resources from lease for each well.
- B. The certificate, when properly executed and approved by the Commission shall constitute authorization to the pipeline or other transporter oil, gas, or geothermal resources from the developed unit named. The Commission may provide written permission for the transportation of production in order to prevent waste, pending execution and approval of the certificate.
- C. The certificate shall remain in full force and effect until:
1. The operating ownership of the developed unit changes, or
 2. The transporter changes, or
 3. The certificate is cancelled by the Commission.
- D. When a change occurs in operating ownership of any developed unit, or when a change occurs in the transporter from any developed unit, the operator shall file a new certificate with the Commission within 10 days of the change. With respect to a temporary change in transporter which involves less than the production of 1 month, the producer may, in lieu of filing a new certificate, notify the Commission and the transporter in writing of the estimated amount of oil, gas, or geothermal resources to be moved by the temporary transporter, and the name of the temporary transporter. The operator shall furnish a copy of the notice to the temporary transporter.
- E. The temporary transporter shall not move any greater quantity of oil, gas, geothermal resources than the estimated amount shown in the notice.
- F. ~~The Commission shall advise the producer or operator, within 10 working days of receipt of the certificate required in subsection (A), whether the certificate is administratively complete. Within 10 working days of receipt of an administratively complete certificate, the Commission shall approve the certificate or provide a written explanation to the producer or operator if the certificate is not approved.~~

NOTICE OF PROPOSED RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES**

PREAMBLE

1. Sections Affected

Article 15
R14-2-1501
R14-2-1502
R14-2-1503
R14-2-1504
R14-2-1505
R14-2-1506
R14-2-1507

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 40-202, 40-203, 40-204, 40-241, 40-250, 40-251, 40-321, 40-322, 40-336, 40-361, 40-365, and 40-367

Constitutional authority: Arizona Constitution Article XV, §§ 2, 3, 4, 6, 7, and 9

Implementing statute: Not applicable.

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Christopher C. Kempley
Assistant Chief Counsel, Legal Division

Deborah R. Scott
Attorney, Legal Division

Address: Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

4. An explanation of the rule, including the agency's reasons for initiating the rule:

Pursuant to the Federal Communications Act of 1996, local exchange carriers are required to interconnect with any telecommunications provider requesting interconnection. If the companies are unable to agree on the terms and conditions for interconnection, the Act mandates that state commissions mediate and/or arbitrate these matters, if requested by any party to the negotiations. The Act does not specify the administrative details necessary to effectuate mediation and arbitration procedures. These rules establish state procedures for mediation and arbitration of interconnection agreements.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

The rulemaking establishes procedures for arbitrating issues between telecommunications companies that are seeking to agree upon the terms of interconnecting their networks.

Under the Federal Telecommunications Act of 1996, telecommunications companies are required to interconnect their networks on terms that are just and non-discriminatory so that the public can have "seamless" service regardless of their local telephone company. Should companies reach an impasse in their interconnection negotiations, state commissions are required to arbitrate disputed issues.

Both incumbent and new entrant local exchange carriers, as well as interested 3rd parties will benefit by knowing the procedures the Commission will follow in resolving disputed issues.

These proposed rules may not result in any increased out-of-pocket cost to the Commission, but will result in staff time being devoted to this new function. The rules should not result in any additional cost to other governmental bodies or political subdivi-

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sions unless either chooses to file comments on arbitration decisions. Parties to the arbitration would each be expected to bear their own costs. There are no costs to private persons or consumers. However, these groups will benefit from the added choices of competing telecommunications companies when interconnection agreements are successfully completed.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: David P. Jankofsky
Assistant Director, Utilities Division

Address: Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Telephone: (602) 542-4251

Fax: (520) 542-2129

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: March 26, 1997

Time: 10 a.m.

Location: Corporation Commission
1200 West Washington Street
Phoenix, Arizona

Nature: Oral proceedings

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
Not applicable.

11. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS, CORPORATIONS
AND ASSOCIATIONS, SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES**

ARTICLE 15. ARBITRATION AND MEDIATION

Section

- R14-2-1501. Application of Rules
- R14-2-1502. Definitions
- R14-2-1503. Negotiation
- R14-2-1504. Mediation
- R14-2-1505. Arbitration
- R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement
- R14-2-1507. Approval Procedure

ARTICLE 15. ARBITRATION AND MEDIATION

R14-2-1501. Application of Rules

These rules govern procedures mandated by the Telecommunications Act of 1996, 47 U.S.C. § 252, regarding the mediation, arbitration, review, and approval of interconnection agreements.

R14-2-1502. Definitions

- A. "Arbitration" means an alternative dispute resolution process in which the Corporation Commission decides the matter in dispute after the parties have had an opportunity to present their respective positions.
- B. "Corporation Commission" or "Commission" means the regulatory agency of the state of Arizona that has jurisdiction over public service corporations operating in Arizona.
- C. "Duty to Negotiate in Good Faith" means that parties meet and

confer at reasonable times and places with minds open to persuasion and with an eye toward reaching agreement on mandatory subjects of bargaining.

- D. "Interconnection Agreement" means a formal agreement between any telecommunications carriers providing or intending to provide telecommunications services in Arizona, setting forth the particular terms and conditions under which interconnection will be provided.
- E. "Mediation" means a voluntary alternative dispute resolution process in which a neutral 3rd party assists the parties in reaching their own settlement. The mediator does not have the power to impose a resolution. The role of the mediator and the goal of the process is to help the parties achieve their own resolution.
- F. "Petition for arbitration" means the petition requesting arbitration of open issues in the negotiation of an interconnection agreement.
- G. "Petitioner" means the party to the negotiation that files the petition for arbitration with the Commission.
- H. "Request for negotiation" means a formal request made by any telecommunications carrier providing or intending to provide telecommunications services in Arizona to another telecommunications carrier to negotiate an interconnection agreement.
- I. "Respondent" or "responding party" means the nonpetitioning party to the request for arbitration.

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R14-2-1503. Negotiation

- A. A local exchange carrier receiving a request to negotiate shall notify the Commission when a request for negotiation has been made pursuant to 47 U.S.C. § 252. The notification shall include the names of the negotiating parties and the date of the request. The notification shall be served on all parties to the negotiation.
- B. Parties must notify the Commission regarding the status of the negotiation no later than 90 days after a request for negotiation has been made.

R14-2-1504. Mediation

- A. Any party negotiating an agreement under 47 U.S.C. § 252 may, at any point in the negotiation, ask the Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.
- B. If a party requests mediation by the Commission, a non-hearing Division employee of the Commission will be appointed to act as mediator.
- C. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, telephone, and telefax numbers of the parties or their representatives. Copies of the request shall be served on all parties to the negotiation.
- D. The mediator shall have discretion to regulate the course of the mediation, including scheduling of mediation sessions, in consultation with the parties. The following general procedures apply:
 - 1. The mediator will not impose a settlement, but can offer proposals for settlement;
 - 2. The mediator may meet individually with the parties or attorneys during mediation;
 - 3. Only the parties to the negotiation may attend the mediation session or sessions unless all parties consent to the presence of others;
 - 4. Parties shall provide the mediator with a brief statement of position and relevant background information prior to the first mediation session. The mediator may ask for this information to be supplemented;
 - 5. The mediator will not provide legal advice to the parties, nor will any mediator's statements as to law or policy be binding on the Commission, unless later adopted by the Commission;
 - 6. The mediation process is confidential, to the extent permitted by law. No stenographic record will be kept.
- E. All parties participating in a requested Commission mediation have a duty to negotiate in good faith. The mediator may terminate the mediation if it appears that the likelihood of agreement is remote or if a party is not participating in good faith, or for other good cause. Ordinarily, a mediation should not be terminated prior to the completion of at least 1 mediation session.

R14-2-1505. Arbitration

- A. Filing and Service of a Petition for Arbitration
 - 1. During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. § 252(b)(1), any party to the negotiation may petition the Corporation Commission to arbitrate any open issues. The petition shall request arbitration of all issues which are unresolved at the time the petition is filed. Parties may continue to negotiate or otherwise resolve the disputed issues after arbitration is requested. The pendency of a mediation shall not bar a party from petitioning the Commission for arbitration.
 - 2. An original and 10 copies of a petition for arbitration shall be filed with the Commission. The petitioner shall

deliver to the respondent a complete copy of the petition and all accompanying documentation on the same day that the petition is filed with the Commission.

B. Contents of Petition and Documentation

- 1. A petition for arbitration shall clearly set forth the date upon which the original request for negotiation was received and the dates 135 days, 160 days, and 9 months thereafter.
- 2. A petition for arbitration shall be accompanied by all relevant documentation concerning the unresolved issues; the position of each of the parties with respect to those issues; and any other issue discussed and resolved by the parties. Relevant documentation includes, but is not limited to the following:
 - a. A brief or other written statement addressing the disputed issues. The brief should address, in addition to any other matters, how the parties' positions and any conditions requested meet or fail to meet the requirements of 47 U.S.C. § 251; any applicable Federal Communication Commission regulations; and any applicable regulation, order or policy of this Commission.
 - b. Where prices are in dispute, the petitioner shall submit its proposed rates or charges and related supporting materials.
 - c. Any conditions which petitioner requests be imposed.
 - d. A proposed schedule for implementation of the terms and conditions of the agreement.
 - e. The petition may include a recommendation as to any information which should be requested from the parties by the arbitrator pursuant to 47 U.S.C. § 252(b)(4)(B). The recommendation should state why the information is necessary for the arbitrator to reach a decision on the unresolved issues.
 - f. A proposed interconnection agreement.
 - g. Any other documents relevant to the dispute, including copies of all documents in their possession or control on which they rely in support of their positions or which they intend to present at the arbitration.
- C. Opportunity to respond. The respondent may respond to the petition for arbitration within 25 days of the filing of the petition. The respondent shall respond to all the specific issues raised in the petition for arbitration.
- D. Confidentiality. Petitions, responses, accompanying material, and any documents provided to the Commission pursuant to a request under 47 U.S.C. § 252(b)(4)(B) may be subject to the Arizona public disclosure law. However, a petition or response may include a request for issuance of a protective order.
- E. Discovery
 - 1. Parties must cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. Parties must exchange copies of all documents relevant to the dispute, including those on which they rely in support of their position or which they intend to present at the arbitration.
 - 2. At the time of filing of a petition for arbitration, or a response, the petitioner may file discovery requests on the responding party, with an information copy provided to the arbitrator.
 - 3. Discovery requests not responded to may be submitted to the arbitrator, with a request that the arbitrator order the discovery, pursuant to 47 U.S.C. § 252(b)(4)(B). The request should indicate an explanation of why the infor-

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mation is necessary to reach a decision on the unresolved issues.

4. Failure to cooperate in discovery may be considered as a failure to negotiate in good faith.

F. Appointment and Authority of Arbitrator

1. Arbitrations will be conducted by Commission Hearing Officers
2. The arbitrator will exercise all authority necessary to conduct the arbitration, subject to the provisions of these rules.
3. The arbitrator may, in the arbitrator's discretion and the extent practical, consolidate proceedings under 47 U.S.C. § 252(b)(4)(B). The request should include an explanation of why the information is necessary to reach a decision on the unresolved issues.
4. The arbitrator may request the assistance of members of the Commission staff in reviewing the petition and accompanying materials, to the extent such staff members have not acted as a mediator with respect to the same interconnection agreement between the same parties.
5. The arbitrator will be authorized to recommend to the Commission a resolution of the disputed issues and any appropriate conditions to be imposed in the form of a Recommended Opinion and Order. The Commission will issue a final decision not later than 9 months after the date on which the local exchange carrier received the request to negotiate.

G. Arbitration Proceeding. Arbitration allows an opportunity for parties to present their positions. However, arbitration does not require sworn testimony or cross-examination of witnesses. Arbitration proceedings will be conducted pursuant to procedures established by the Hearing Officer.

H. Hearing Officer. Each party shall be responsible for bearing its own fees and costs.

I. Any person wishing to comment on the Recommended Opinion and Order may do so by filing written comments with the Commission prior to the Commission's final decision.

R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement

- A. An interconnection agreement shall be submitted to the Commission for approval under 47 U.S.C. § 252(e) within 30 calendar days of the issuance of the Commission's final decision on the petition for arbitration, in the case of arbitrated agreements, or, in the case of negotiated agreements, within 30 calendar days of the execution of the agreement. The 30-day deadline may be extended by the Commission for good cause.
- B. An original and 10 copies of requests for approval shall be filed with the Docket Control section of the Commission. Any party to the agreement may submit a request for approval. Unless filed jointly by all parties, the request for approval and any accompanying materials should be served on the other signatories on the day of the filing.
- C. A request for approval shall include the documentation set out in this subsection. The materials can be filed jointly or sepa-

rately by the parties to the agreement, but should all be filed by the 30-day deadline set out in subsection (A).

1. Negotiated agreements. The following documentation must be filed:

- a. A complete copy of the signed agreement, including any attachments or appendices;
- b. A brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to why the agreement should be adopted, including a statement as to why the agreement does not discriminate against non-party telecommunications carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements.

2. Arbitrated agreements. The following documentation must be filed:

- a. A complete copy of the signed agreement, including any attachments or appendices.
- b. A brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to why the agreement should be adopted, and a statement explaining how the agreement meets each of the applicable specific requirements of 47 U.S.C. § 251, including any applicable Federal Communication Commission regulations.
- c. Complete and specific information to enable the Commission to make the determinations required by 47 U.S.C. § 252(d).

3. Combination agreements (arbitrated/negotiated). Any agreement containing both arbitrated and negotiated provisions shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum should clearly identify which Sections were negotiated and which arbitrated.

D. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines will not begin until a request has been properly filed.

E. Agreements containing both arbitrated and negotiated provisions will be subject to the 30-day deadline specified in 47 U.S.C. § 252(e)(4).

R14-2-1507. Approval Procedure

- A. Unless otherwise ordered by the Commission, a hearing will not be held for a request for approval of an interconnection agreement.
- B. The Commission will enter an order approving or rejecting the interconnection agreement within 30 days of request for approval of arbitrated agreements, and agreements containing both arbitrated and negotiated provisions or within 90 days of request for approval of negotiated agreements with written findings as to any deficiencies.